

DIVISION OF ADMINISTRATION

PCF Oversight Board
P.O. Box 3718
Baton Rouge, LA 70821



State of Louisiana
PATIENTS' COMPENSATION FUND

BOBBY JINDAL
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September 25, 2009

Honorable Willie L. Mount, Chairman, Senate Committee on Health and Welfare
Honorable Kay Katz, Chairman, House Committee on Health and Welfare
Honorable Troy Hebert, Chairman, Senate Committee on Insurance
Honorable Charles Kleckley, Chairman, House Committee on Insurance

RE: Senate Concurrent Resolution No. 111
Regular Session, 2007

Dear Honorable Chairmen:

In accordance with SCR 111, the Louisiana Patient's Compensation Fund Oversight Board submits the attached annual report on the status of the Patient's Compensation Fund. This report includes a history of the Fund, a memorandum on the economic viability of the Fund, and several graphs and charts showing collections, payments, the agency's growth and the funding levels.

The purpose of this report is to offer information which will help answer questions legislators may have concerning the Fund by providing details of the functions and financial status of the Fund. It was and is anticipated that there will be legislation forthcoming relative to the operation of the agency and it is important that information be available to legislators.

As a quick overview of the Fund I offer the following:

The **mission** of the Patient's Compensation Fund Oversight Board is to administer, manage, operate and defend the Fund in a manner that will timely and efficiently meet the needs and interests of those Louisiana citizens for whom the Fund was created to serve - Louisiana healthcare providers, parties injured as a result of medical malpractice and the citizens of the State of Louisiana.

The **purpose** of the Oversight Board is to guarantee that affordable, medical malpractice coverage is available to all private healthcare providers

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and to provide a certain, stable source of compensation for those injured as a result of medical malpractice.

The **goal** of the Oversight Board is to ensure the longevity of the Fund by maintaining its financial stability. By establishing and maintaining surcharge rates that are held to moderate levels, the Fund strives to effectively maintain sufficient solvency to promptly resolve and fairly compensate parties injured as a result of medical malpractice and to zealously resist and defend unmeritorious and/or exaggerated claims.

Since its inception in August 1990, the Oversight Board has seen to it that the Fund continues to meet all its obligations. The Oversight Board has implemented rate increases nine of the last ten years. For the past six years, actuarial studies included a five percent deficit reduction load specifically aimed at reducing the unfunded accrued liability. While there was actually an indication for a rate decrease for 2009, due to the unfunded liability, the Oversight Board increased rates charged to all health care providers by 5%. This decision resulted in approximately 19% of the surcharges collected reducing the UAL by about \$30,000,000. This year, the annual actuarial study again showed continued improvement and an indication for an overall rate reduction of 11%. The Oversight Board chose to address the UAL and did not recommend a rate reduction. As a result, at least 15% of the surcharges collected in 2010 will go towards reducing the UAL. The Oversight Board has steadily increased its cash reserves with the intent of reducing the unfunded liability.

Overall, the Oversight Board has made great progress in not only reducing the UAL, but establishing better working relationships with both the defense and plaintiff attorneys. This has enabled the Fund claims department to resolve more claims in both a more reasonable timeframe and for fair and reasonable amounts.

The Fund is not considered a party to initial litigation proceedings, but has strongly encouraged the parties involved to include the Fund in settlement discussions. As a result, interaction and cooperation has greatly improved and claims are being resolved more expeditiously. This benefits both the Fund in lowering the amount of interest and defense costs that result in extended litigation and allows the injured party to be compensated sooner. Savings by the Fund results in savings to the health care providers.

The Fund's claims budget was \$115,000,000.00 for the fiscal year 2008-09 and is \$120,000,000.00 for the current fiscal year. In fiscal years 2006-07 and 2007-08 the Fund expended \$120,000,000 in the payment of claims and related expenses. An increase in the number of claims staff several years ago resulted in reducing the pending claims from 12,000 in 2003 to less than 5,800 in 2009. Claims are being handled more effectively and efficiently,

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to the benefit of both the injured parties and the health care providers. The administrative budget for the current fiscal year is \$3,981,919. The T.O. for the agency includes two unclassified positions and 42 permanent positions. The Fund also has two student workers who assist with the mail and copying.

I hope you find this report informative and beneficial. I have provided a copy of the report for each member of the committee. The Fund's website, lapcf.louisiana.gov, contains more information, including minutes from board meetings, financial information and rate information. Should there be any other information you feel would be helpful, please contact me.

Sincerely,

Lorraine LeBlanc
Executive Director

c: Members of Senate Committee on Health and Welfare
 Members of House Committee on Health and Welfare
 Members of Senate Committee on Insurance
 Members of House Committee on Insurance
 Members of Senate Committee on Judiciary A
 Members of House Committee on Civil Law and Procedure

ECONOMIC VIABILITY OF THE FUND

Act 817 of the 1975 Legislature created the Patient's Compensation Fund (PCF). The PCF has always labored to attain the position where it functions in a manner that combines quality claims administration with stable surcharge rates.

If the Patient's Compensation Fund (PCF) were compared to a traditional insurance company, one might question the fiscal soundness of the entity. However, the Patient's Compensation Fund is not an insurance company. It is a legislatively created entity designed to make medical malpractice coverage available to private health care providers at a reasonable price and to compensate those unintentionally injured as a result of what is determined to be medical malpractice. Since its inception in 1975, the PCF has consistently met all its obligations by paying all settlements and judgments in full. In addition, the financial status of the PCF has significantly improved since 1990 when the Oversight Board was created by the state legislature.

The PCF's fiscal strength is subject, in part, to surcharge collections, which are the fees charged to the private health care providers that choose to enroll in the PCF. Participation in the PCF is not mandatory. A health care provider can choose to forego the benefits of the Act, namely the Medical Review Panel and the cap on damages by not enrolling.

An annual actuarial study is done to determine the adequacy of rates. The recommendations of the actuary are utilized by the Board to create the necessary rates to meet our statutory mandated fund levels and to lower the amount of the Fund's unfunded liability.

The public is allowed and encouraged to participate in all Board discussions. Normally, at the August meeting, a determination is made as to whether a rate increase is needed and the amount recommended is justified. Requests for rate increases must be presented to and approved by the Louisiana Department of Insurance. There have been years in the past in which the Louisiana Insurance Rating Commission has denied proposed rate increases by the Oversight Board. There have been 17 approved rate increases since January 1989, resulting in rates actually being increased about 600% for physicians and 620% for hospitals from 1987 to 2009. The continued participation by private health care providers in the PCF, despite these substantial rate increases, evidences the private health care providers' commitment to the program and the Oversight Board's determination to maintain a sound and reliable fund.

Since 1990, when the Oversight Board began managing the PCF, the amount of funds collected from the health care providers totals \$1,641,486,337 with payments to claimants of \$1,243,210,397. During this time, the PCFOB increased the overall fund balance from \$29,000,000 to \$550,000,000.

The Oversight Board continues to strive to improve the financial status and stability of the PCF. The PCF now substantially exceeds the mandated statutory minimum. It is

and has always been the vision of the PCF Oversight Board to continue to close the gap between outstanding liabilities and current assets without burdening enrolled health care providers with excessive annual rate increases. This is important to Louisiana which needs stable and affordable surcharges which will still provide for sufficient and fair compensation to those persons who are entitled to such compensation. In August 2008, the PCFOB voted to raise rates by 5% for enrollments renewing effective January 1, 2009, which resulted in 20% of the collections going towards the unfunded liability. For rates effective as of January 1, 2010, 15% of the overall collections will go towards the unfunded liability. The PCFOB's actions have resulted in a steady increase in funds and a decrease in the unfunded liability, while at the same time attempting to keep surcharge rates at reasonable levels for private health care providers. This effort is vital to this State as it encourages health care providers to continue to practice in Louisiana and serve our citizens.

A BRIEF HISTORY
OF THE
LOUISIANA PATIENT'S COMPENSATION FUND

In the early 1970's, a problem of crisis proportions arose in medical malpractice liability in the U.S. Because of an explosion in both loss frequency and severity, insurance carriers found themselves forced to raise malpractice premiums by massive percentages. Ultimately, a number of carriers retired from writing malpractice liability altogether. The effect on physicians and hospitals was chilling. Some found themselves unable to pay indicated premiums and some found themselves unable to obtain coverage at any price. Certain areas of the country were harder hit than others and, in those areas, physicians started leaving their practices or practicing without coverage. Louisiana was one of the states facing this situation.

It was in this climate that the 1975 legislative session opened and **Act 817** was passed which created the Louisiana Patient's Compensation Fund to cover the private health care providers. The purpose of this legislation was twofold. First, it was to ensure that a stable and affordable market existed for malpractice insurance and thereby keeping practitioners in the state. Second, it was to create a viable fund for compensating claimants. It also provided a statutory cap on total liability. The \$500,000 cap was considered an equitable tradeoff between compensating the most injured claimants adequately and maintaining the financial stability of the Patient's Compensation Fund. Private health care providers who choose to enroll in the PCF remain responsible for the first \$100,000 of each claim, and are required to provide the Patient's Compensation Fund with evidence of insurance coverage. R.S. 40:1299.41 *et seq* detailed the specifics of the operation of the Patient's Compensation Fund, and also provided for the Medical Review Panel process, in which each claim is reviewed by three licensed Louisiana health care providers, one (1) appointed by the plaintiff, one (1) by the defendant and the third by mutual agreement of the first two appointees. The attorney chairman is selected by mutual agreement of the plaintiff and defendant. After reviewing the case and rendering an opinion, the health care providers that were members of the panel may be deposed by both the plaintiff and defendant. The medical review panel process is the first step in pursuing a claim against a health care provider.

The requirement for an underlying proof of insurance allows the private providers to supply the Patient's Compensation Fund with an acceptable security valued at \$125,000 and self-insure their first \$100,000 exposure in lieu of an actual insurance policy for the primary layer of \$100,000. Roughly 20% of all active enrollees are currently self-insured. In 1984, the statute was amended to allow for the payment of all related medical expenses. This change allowed those patients with more severe injuries to have medical expenses paid on an ongoing basis. This was an important concession as these expenses have no statutory limit on the total payment. These expenses are paid in addition to the general damages settlement or judgment payment. This provision also reduces the payments that were being made or could have been made by Medicare and Medicaid. This lessens the burden to these programs.

In the 1990 legislative session, a major change was made in the format and operation of the Patient's Compensation Fund. As a result of an increasing concern by the private health care providers for the financial integrity of the Patient's Compensation Fund, the statute was revised to move the operation of the Patient's Compensation Fund from the Department of Insurance and the Attorney General's office to an Oversight Board. This was intended to give the Patient's Compensation Fund more autonomy of operation and also to allow for the creation of a trained staff to reduce the time and expense associated with claims processing. This change was felt necessary in protecting the ongoing financial stability of the Patient's Compensation Fund. This in turn ensures availability of coverage to the private health care providers and compensation to those injured as a result of medical malpractice.

The creation of the Oversight Board gave providers greater input, and also greater responsibility, in the operation of the Patient's Compensation Fund. The Oversight Board is drawn from the provider groups based on their proportional representation in the Patient's Compensation Fund as a whole. The members of the Oversight Board are appointed by the Governor from nominations by the various medical professional associations. In addition to physician and hospital members, the Oversight Board includes a representative from the miscellaneous classes, and also an insurance industry executive (from a carrier not writing malpractice insurance).

Today, the Patient's Compensation Fund insures over 17,000 private health care providers in Louisiana, including physicians, hospitals, clinics, dentists, ambulance services, optometrists, nurses, chiropractors, nursing homes, physical therapists, and a wide variety of others. Funds paid in by the members are approximately \$170 million annually, and claim payments of at least \$115 million have been made for the last three fiscal years, with the same amount expected in the current fiscal year. While the legality of the \$500,000 cap has come into question a number of times, the Louisiana Supreme Court has, thus far, ruled it to be constitutional. Litigation challenging the constitutionality of the cap is currently pending. Further, bills to increase the cap have been filed each session for the last several years and this activity is expected to continue. While no bill has completed the process and been enacted, the possibility still exists that there could be changes in the cap and the system as a whole.

The purpose for creating the Patient's Compensation Fund was to offer a stable, affordable market for medical malpractice liability insurance and also make available a reliable and secure source of compensation for injured patients and their families. The providers have willingly accepted large premium increases over the past years to ensure the fiscal integrity of the Patient's Compensation Fund to financially meet its obligations.